

Alex M. Weingarten (SBN 204410)  
AWeingarten@willkie.com  
Logan M. Elliott (SBN 268105)  
LElliott@willkie.com  
**WILLKIE FARR & GALLAGHER LLP**  
2029 Century Park East, Suite 3400  
Los Angeles, CA 90067  
Telephone: (310) 855-3000  
Facsimile: (310) 855-3099  
  
Attorneys for Creditor  
CO-TRUSTEE JEFFREY WINTER

**UNITED STATES BANKRUPTCY COURT FOR  
THE CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In re:

LESLIE KLEIN,  
  
Debtor.

CASE NO.: 2:23-bk-10990-SK

Chapter 11

**NOTICE OF MOTION AND MOTION FOR  
ORDER GRANTING RELIEF FROM  
AUTOMATIC STAY PURSUANT TO 11  
U.S.C. § 362**

Date: September 13, 2023  
Time: 8:30 a.m.  
Crt. Rm.: 1575

**WILLKIE FARR & GALLAGHER LLP**  
2029 CENTURY PARK EAST, SUITE 3400  
LOS ANGELES, CA 90067  
310-855-3000

**TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on September 13, 2023, at 8:30 a.m., or as soon thereafter as the motion may be heard, in Courtroom 1575 of the above-captioned Court, located at 255 East Temple Street, Los Angeles, California 90012, Creditor Jeffrey Winter (“Jeff”), as Co-Trustee of the Franklin Henry Menlo Irrevocable Trust Established March 1, 1983 (the “Trust”), will and hereby does move this Court for an order granting Jeff relief from the automatic stay pursuant to 11 U.S.C. § 362(d) (the “Motion”).

This Motion is made pursuant to 11 U.S.C. § 362(d)(2) on the grounds that relief from automatic stay is required to distribute proceeds from certain life insurance policies tied up in the Trust to certain Trust beneficiaries. First, the debtor Leslie Klein (“Klein”) has no equity or interest in the subject property (the life insurance proceeds). Second, the life insurance proceeds are not necessary for a reorganization of the estate because the insurance funds are not part of the bankruptcy estate.

Alternatively, Jeff requests relief from automatic stay under 11 U.S.C. § 362(d)(1) for cause. Relief under Section 362(d)(1) is appropriate because: (1) the nonbankruptcy forum is the appropriate venue to confirm distributions to the Trust beneficiaries; (2) continued litigation in the nonbankruptcy forum for the purposes of making long overdue distributions to the Trust beneficiaries will not interfere with the bankruptcy case as the life insurance proceeds are not part of the bankruptcy estate; (3) lifting the stay for the purpose of making life insurance distributions will not prejudice the interests of Klein or any other third party; (4) the Trust beneficiaries’ interests in receiving the distributions will be most expeditiously resolved in the nonbankruptcy forum; and (5) the balance of harms weighs against maintaining the stay and towards granting relief.

Please take further notice that this Motion is being heard on regular notice pursuant to LBR 9013-1(d). A party opposing or responding to the Motion must file and serve the response no later than fourteen days before the hearing. Failure to file and serve a timely objection to the Motion or to appear at the hearing may be deemed by the Court to be consent to the relief requested herein.

1 This Motion is based upon this Notice, the attached Memorandum of Points and  
2 Authorities, the Declaration of Alex M. Weingarten, and the pleadings, records, and files of this  
3 action, and on such other oral and documentary evidence as may be presented at the hearing of  
4 this Motion.

5 Dated: August 11, 2023

**WILLKIE FARR & GALLAGHER LLP**

6  
7 By: /s/ Alex M. Weingarten  
8 Alex M. Weingarten  
9 Logan M. Elliott  
10 Attorneys for Creditor  
11 CO-TRUSTEE JEFFREY WINTER  
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2029 CENTURY PARK EAST, SUITE 3400  
LOS ANGELES, CA 90067  
310-855-3000

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**MEMORANDUM OF POINTS AND AUTHORITIES**

Jeffrey Winter (“Jeff”),<sup>1</sup> co-trustee of the Menlo trusts (the “Menlo Trusts”), as a holder of claims against Leslie Klein (the “Debtor” and “Klein”), hereby respectfully submits this Memorandum of Points and Authorities (the “Memorandum”) in support of the *Motion for Relief From The Automatic Stay Under 11 U.S.C. § 362* (the “Motion”). Jeff seeks entry of an order granting relief from the automatic stay pursuant to section 362(d) of title 11 of the United States Code (the “Bankruptcy Code”) to proceed under applicable nonbankruptcy law to allow the nonbankruptcy forum to provide Jeff and co-trustee Frank Menlo (“Frank”) (together, “Co-Trustees”) with instructions confirming co-trustees’ distributions of proceeds from life insurance policies to beneficiaries of the Menlo Trusts as reflected in a distribution agreement between Co-Trustees (“Distribution Agreement”). Jeff also requests that the order be binding and effective in any bankruptcy case commenced by or against the Debtor for a period of 180 days.

**PRELIMINARY STATEMENT**

Co-Trustees seek to distribute specific payouts of life insurance proceeds to certain beneficiaries of the Menlo Trusts who have long been prevented from receiving their rightful distributions by Klein’s rampant embezzlement and repeated abuses of process. Jeff lays out Co-Trustees’ agreement to distribute these specific payouts in great detail in the Distribution Agreement between Jeff and Frank and in the petition for instructions Jeff filed (and Frank joined) in the Nonbankruptcy Action<sup>2</sup> on July 28, 2023 to confirm Co-Trustees’ agreement (“Petition for Instructions”). *See* Declaration of Alex M. Weingarten (“Weingarten Decl.”), Ex. 1. Co-Trustees Jeff and Frank and are in complete agreement regarding the distribution payments each beneficiary is to receive, and the terms of their agreement are memorialized in the Distribution Agreement and the Petition for Instructions. Moreover, Klein has no legitimate interest in the life insurance funds Co-Trustees seek to distribute – and admits as much in his June 28, 2023 declaration. The life insurance proceeds Co-Trustees seek to distribute are in no way, shape, or form part of the

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<sup>1</sup> Members of the Winter and Menlo families are referred to by their first names “for the purposes of clarity, not out of disrespect.” *See Young v. McCoy*, 147 Cal. App. 4th 1078, 1081 n.2. (2007).

<sup>2</sup> Nonbankruptcy Action is defined in the Motion to be *In the Matter of Franklin Henry Menlo Irrevocable Trust vs. Klein*, No. BP-136769 (Cal. Supp. Ct. Sept. 18, 2012).

1 bankruptcy estate. Klein merely seeks to delay the inevitable judgment against him and rightful  
2 distributions to the Menlo Trust beneficiaries with this bankruptcy filed in bad faith.

3 The Court should put a stop to Klein’s tactics and lift the stay to allow Co-Trustees’  
4 distributions to the Menlo Beneficiaries for multiple reasons:

5 • First, Section 362(d)(2) requires the Court to lift an automatic stay with respect to  
6 a property if: (1) the debtor does not have equity in such property; and (2) such property is not  
7 necessary to an effective reorganization. Klein has no claim (and, indeed, makes no such claim)  
8 to the life insurance proceeds Co-Trustees propose to distribute in the Petition for Instructions.  
9 And, the life insurance policies belonging to the Menlo Trusts and their beneficiaries are not part  
10 of the bankruptcy estate and are unnecessary to an effective reorganization of the estate.

11 • Second, Section 362(d)(1) permits the Court to lift an automatic stay “for cause.”  
12 Granting relief from stay will prevent this Court from having to rule on specialized areas of probate  
13 law and from interfering with factual and legal issues already decided in the nonbankruptcy forum,  
14 the Superior Court of California, County of Los Angeles (the “Superior Court”). The Superior  
15 Court already decided the beneficiaries of the Menlo Trusts were entitled to certain distributions  
16 from the Menlo Trusts and that Klein wrongfully withheld such distributions in the Nonbankruptcy  
17 Action. *See* Weingarten Decl., Ex. 7 at 4:1-3, n.4, 9:11-10:27; Ex. 8. The distributions Jeff and  
18 Frank now seek to provide to the beneficiaries must be confirmed by the Superior Court – and  
19 there is no reason to delay distributing these long overdue amounts now to the beneficiaries. The  
20 Motion should be granted.

21 **FACTUAL BACKGROUND**

22 **Sam And Vera Menlo Establish Trusts For The Benefit Of Their Family**

23 Sam Menlo (“Sam”) and Vera Menlo (“Vera”) married in 1956. *See* Dkt. No. 84,  
24 Declaration of Paul P. Young (“Young Decl.”), Ex. 2. During their lifetime together, Sam and  
25 Vera amassed significant wealth and had five children: Frank, Deborah Menlo Deutsch, Norine  
26 Eve Menlo, Judith Menlo Frankel, and Madeline Menlo Lipschitz. *See generally id.* Together as  
27 Trustors, Sam and Vera established at least ninety-six irrevocable trusts for each of their children,  
28

1 grandchildren, and future generations including the twenty-four trusts at issue in the  
2 Nonbankruptcy Action (collectively, the “Menlo Trusts”). *Id.*

3 Klein served as sole trustee of the Menlo Trusts since their inception until his suspension  
4 by Judge Luna in the Nonbankruptcy Action on September 16, 2022. *Id.*

5 **Twenty-Four Beneficiaries Of The Menlo Trusts Initiate The Nonbankruptcy**  
6 **Action To Stop Klein’s Theft Of Trust Assets**

7 Klein is a licensed attorney with a long and proven history of professional misconduct,  
8 including misappropriation and commingling of client funds. *See* Dkt. No. 84, Young Decl., Ex.  
9 3. As a result, the State Bar of California suspended Klein’s law practice license in 1992 and again  
10 in 1995. *Id.*

11 Klein applied his honed embezzlement skills in the course of his stewardship of the Menlo  
12 Trusts. *See id.*, Ex. 4. On September 18, 2012, Frank filed a petition on behalf of similarly situated  
13 Menlo Trusts beneficiaries (the “Menlo Beneficiaries”) against Klein, requesting Klein’s removal  
14 as trustee, an accounting, and a surcharge. *See id.* On March 22, 2013, twenty-four Menlo  
15 Beneficiaries filed separate petitions on behalf of their trusts that were ultimately consolidated in  
16 Department 3 of the Superior Court. *See id.*, Ex. 5. The beneficiaries contend that Klein breached  
17 his fiduciary duties as trustee by, among other things, misappropriating millions of dollars of funds  
18 and assets and establishing lines of credit using the trusts as collateral for his own use and benefit.  
19 *Id.*

20 **Judge Reiser Finds Klein Committed Staggering Embezzlement In This Case And**  
21 **Orders A \$30,401,823 Surcharge Against Klein**

22 Klein submitted numerous erroneous, incomplete, and misleading accountings in violation  
23 of his fiduciary duties between 2013 and 2018. *See id.*, Ex. 6. On September 15, 2021, the  
24 Superior Court appointed the Hon. Glen M. Reiser (Ret.) as referee (the “Referee”) under Civil  
25 Procedure Code Section 639(a)(1) to conduct consecutive trials on Klein’s pending accounting  
26 petitions in the Nonbankruptcy Action (the “Accounting Trials”). *See id.*, Ex. 7. The September  
27 15 appointment permitted the Referee to decide the amounts of surcharge resulting from a review  
28



1 of Klein’s accountings including enhanced damages under Probate Code Sections 850 and 859.  
2 *Id.*

3 On August 29, 2022, Judge Reiser issued his report and recommendation (the “R&R”) following trials held from December 15, 2021 through March 30, 2022. *See id.*, Ex. 1. Following  
4 Judge Reiser’s consideration of “thousands of pages of documentary exhibits beyond the accounts  
5 themselves,” expert forensic accounting testimony, and testimony from Klein himself, Judge  
6 Reiser excoriated Klein for his wanton theft of trust assets. *Id.* at 16:19–20. Judge Reiser found:

8 [T]hat through an elaborate scheme to pay himself by co-mingling assets;  
9 cross-borrowing among 24 [t]rusts; taking loans against trust assets and cross-  
10 paying debts—filtered with stunning frequency through Klein’s personal and  
11 business accounts with multiple other sources of income and receipts and  
outgoing payments, Klein was able to collectively embezzle millions of  
dollars from the Menlo Trusts.

12 *Id.*, ¶¶ 48:11–15. Judge Reiser determined that Klein maximized his commingling of trust  
13 accounts “to render the scope and breadth of Klein’s misappropriations incalculable and  
14 untraceable.” *Id.* at 30 n.31. Judge Reiser further found that, among other conduct, Klein  
15 “borrowed many millions of dollars against [t]rust assets as to which he has never shown any  
16 interest in repaying” and “torpedoed \$20,000,000 in valuable [t]rust life insurance policies because  
17 of his compulsion to divert Menlo Trust[s] assets for non-[t]rust purposes for no legitimate reason.”  
18 *Id.* at 78:17-79:8.

19 Judge Reiser also found that Klein embezzled the principal sum of \$19,225,065 based on  
20 Klein’s proven theft of Menlo Trusts assets. *Id.* at 78:20–21. Ultimately, Judge Reiser  
21 recommended that Klein should be surcharged for his theft in the amount of \$30,401,823 including  
22 double damages under Probate Code Section 859 which imposes enhanced damages based on the  
23 “bad faith” concealment of trust property. *Id.* at 55:6–56:2. Judge Reiser further determined that  
24 Klein’s removal “appears to be a *fait accompli*” under the circumstances. *Id.* at 22:25–27. There  
25 is legitimate risk that Klein will conceal or disappear with the money he embezzled from the Menlo  
26 Trusts now that his scheme has been exposed. *See id.*

**The Superior Court Suspends Klein As Trustee And Appoints Jeffrey Winter And Frank Menlo As Interim Co-Trustees**

On September 15, 2022, the Menlo Beneficiaries, represented by Willkie Farr & Gallagher LLP, filed *ex parte* applications for a temporary restraining order to suspend Klein as trustee. *Id.*, Ex. 8. The applications were premised on Judge Reiser’s irrefutable findings in the R&R that Klein embezzled millions of dollars, refused to comply with the terms of the Trust, wasted \$20,000,000 in valuable life insurance policies, and engaged in a deceptive ploy to conceal millions of dollars of fiduciary breaches. *Id.*

On September 16, 2022, the Superior Court suspended Klein as trustee of the Menlo Trusts and appointed Jeff and Frank as “Co-Trustees” of the Menlo Trusts. *Id.*, Ex. 9. In so ruling, the Superior Court relied on the Menlo Beneficiaries’ argument in their *ex parte* suspension applications that they have a strong probability of success on the merits of their breach of fiduciary duty claim. *Id.*

**Co-Trustees File An Application For Writ Of Attachment And Right To Attach Order Which Klein Schemes To Avoid<sup>3</sup>**

On October 19, 2022, the Co-Trustees, on behalf of the Menlo Beneficiaries, brought an application for a right to attach order and a writ of attachment to attach \$19,225,064 to ensure that Klein does not disappear with the money he stole from the Menlo Trusts (“Attachment Application”). *Id.*, Ex. 10. The Co-Trustees’ Attachment Application seeks to attach Klein’s nonexempt property, including, but not limited to, Klein’s real property, personal property, equipment, motor vehicles, chattel paper, negotiable and other instruments, securities, deposit accounts, safe deposit boxes, accounts receivable, and general intangibles. *See id.*

On November 10, 2022, the Superior Court issued a temporary protective order (the “TPO”) in the interim “in the interest of equity and justice” to prevent Klein from taking further

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<sup>3</sup> On April 25, 2023, Frank Menlo (Co-Trustee of the Menlo Trusts) filed a motion for relief from stay in this action seeking temporary relief from the bankruptcy stay so that Frank’s outstanding nondischargeable claims against Klein could be resolved in the nonbankruptcy forum. *See* Dkt. No. 84. That motion recounts in even greater detail Klein’s established wrongdoing and schemes to sell properties to avoid attachment. Frank’s motion for relief from stay has been fully briefed and is still pending before this Court.

1 steps to “transfer, sell, dispose of, encumber or hypothecate any non-exempt property owned by  
2 him” and thereby render himself judgment-proof. *See id.*, Ex. 13.

3 That same day (November 10, 2022), Co-Trustees were informed that Klein attempted to  
4 sell two residential properties in which he has an interest at a substantial discount. *See id.*, Ex. 14.  
5 On November 11, 2022, Alex M. Weingarten, counsel for Jeff, sent Klein’s representative a letter  
6 requesting that he cease any attempted sales of Klein’s properties in light of the November 10  
7 TPO. *See id.*, Ex. 15. To date, the Co-Trustees have received no assurances that Klein has  
8 refrained from selling any of the affiliated assets to avoid judgment in the Nonbankruptcy Action.  
9 *See id.* In fact, as Klein continued the same pattern of behavior, the Superior Court issued multiple  
10 orders to prevent Klein from disposing of his property including an Attachment Application for  
11 \$19,255,064. *See id.*, Ex. 22.

12 **Jeff Actively Pursued The Writs Of Attachment Prior To The Bankruptcy Stay**

13 Jeff worked diligently to effectuate the writs of attachment after the Superior Court granted  
14 the Attachment Application on January 3, 2022 and before Klein filed for bankruptcy on February  
15 22, 2023. *See id.*, Ex. 25. Among other things, counsel worked to prepare each of the required  
16 sheriff’s instructions for the process server in compliance with each county sheriff’s widely  
17 differing requirements (including incorporating assessor maps and title information) so that the  
18 writs can be noticed and served as soon as they are executed by the clerk. *See id.* While this was  
19 going on, Klein, on February 22, commenced with this Court a voluntary case under chapter 11 of  
20 title 11 of the United States Code. *See* Dkt. No. 1.

21 Due to the imposition of the automatic stay, the corrected writs of attachment have not  
22 been served, and the Nonbankruptcy Action cannot proceed to judgment. *See id.*; *see also*  
23 Weingarten Decl., Ex. 3.

24 **The Superior Court Formally Adopts The R&R**

25 On April 24, 2023, the Superior Court adopted the findings in Judge Reiser’s R&R  
26 “without modification.” *See id.*, Ex. 4 at 12. The Superior Court also removed Klein as Trustee  
27 of the Trust. *See id.*, Ex. 5 at 5.  
28

**The Superior Court Allows Distribution Of Insurance Proceeds To Co-Trustees**

On May 12, 2023, the Menlo Beneficiaries filed a motion to remove the freeze on the Menlo Trust’s accounts and life insurance policies (“Motion to Unfreeze”) in the Nonbankruptcy Action arguing that the freeze on trust accounts and life insurance policies should be removed and distributions to the beneficiaries should be allowed pursuant to the terms of the relevant trusts in this proceeding. *See id.*, Ex. 6. These life insurance policies are included within the Menlo Trusts’ assets and include: (1) American General Policy # A10159602L totaling \$14,000,010; (2) American General Policy # A10162551L totaling \$7,901,647.00; and (3) Lincoln National Policy # G1618958 totaling \$8,398,275.00.

On June 5, 2023, the Motion to Unfreeze came on for hearing. *See id.*, Ex. 8. Following the hearing, the Superior Court granted the Motion to Unfreeze and ordered that the trust accounts and insurance proceeds at issue should be unfrozen and released only to the Co-Trustees (and not the trust beneficiaries). *See id.* at 2:5-15. The Superior Court also made clear that funds “shall not be disbursed to any trust beneficiary without further Order of the Court.” *See id.* at 2:6-8, 14-15.

**Klein Admits He Is Not Entitled To The Life Insurance Proceeds**

On June 28, 2023, Klein filed a declaration in the Nonbankruptcy Action falsely stating he did not let insurance policies lapse (contrary to Judge Reiser’s findings in the R&R) and arguing that only the amounts he “borrowed” from certain beneficiaries to pay insurance premiums be distributed back to them. *See id.*, Ex. 9. Klein submitted no evidence in support of his claims. *See id.*

On July 6, 2023, counsel for the bankruptcy trustee, Bradley D. Sharp, filed a response in the Nonbankruptcy Action stating that no distributions should be disbursed until Klein made “appropriate disclosures” in response to the trustee’s requests and/or the trustee had opportunity to look into the matter further. *See id.*, Ex. 10. Sharp’s response has no bearing on the bankruptcy estate because the additional documentation he is requesting does not exist. *See id.*, Ex. 7 at 19:14-24, 22:11-25:9; Ex. 9; Ex. 11, ¶¶ 6-7; Ex. 12. Klein has not produced *any* documents in a decade of ongoing litigation showing that he or any other third parties are entitled to the funds Co-Trustees are now proposing to distribute to the beneficiaries. *See id.*

On July 7, 2023, counsel for the Menlo Beneficiaries, Donald Saltzman, filed a declaration in the Nonbankruptcy Action in opposition to the declaration from Klein and the response from the bankruptcy trustee arguing that Klein’s declaration was nonsense and should be disregarded because: (1) Klein submitted no evidence in support (and also did not argue these positions at trial); (2) Klein actually did not claim that any of the insurance funds belong to him or any non-beneficiary third party; and (3) funds belonging to the beneficiaries should be disbursed to them without further delay. *See id.*, Ex. 11.

On July 9, 2023, Klein’s counsel, Eric Olson, filed a declaration in the Nonbankruptcy Action *admitting* that Klein has no interest in the life insurance proceeds and “did not make a claim personally to the insurance proceeds[.]” *See id.*, Ex. 12, ¶ 6. Klein again submitted no evidence that unnamed third parties might have claims to the insurance proceeds. *See generally id.*, Ex. 12.

**Jeff Files Petition For Instructions In Nonbankruptcy Action To Disburse Life Insurance Proceeds To Certain Trust Beneficiaries**

On July 27, 2023, Jeff and Frank signed the Distribution Agreement memorializing the terms of their agreement to make life insurance payout distributions in specific amounts to both: (1) trust beneficiaries who were originally beneficiaries of the life insurance policies within the Menlo Trusts (“Life Insurance Beneficiaries”); and (2) additional trust beneficiaries. *See id.*, Ex. 1 at Ex. 1.

On July 28, 2023, Jeff filed a petition for instructions regarding distributions in the Nonbankruptcy Action to request instructions from the Superior Court confirming the Co-Trustees’ distributions payouts agreed upon in the Distribution Agreement (“Petition for Instructions”). *See id.*, Ex. 1. In summary, the Co-Trustees first propose in the Petition for Instructions to pay off the lines of credit extended to the trust by certain trust beneficiaries (specifically, Frank, Deborah Deutsch, Madeline Lipschutz, and Judith Frankel). *See id.*, ¶ 19(b). Co-Trustees then propose to make life insurance payout distributions (in amounts specifically recorded in the Distribution Agreement and Petition for Instructions) to both the Life Insurance Beneficiaries and additional trust beneficiaries. *See id.*, ¶ 19(c)-(d). The Distribution

1 Agreement between Co-Trustees is attached to the Petition for Instructions as Exhibit 1. *See id.*,  
2 Ex. 1 at Ex. 1.

3 On August 8, 2023, Jeff filed a supplement to the Petition for Instructions showing that  
4 all the Life Insurance Beneficiaries consented to the terms of the Distribution Agreement and  
5 agreed to the specific distributions of funds proposed by Co-Trustees in the Distribution  
6 Agreement and Petition for Instructions. *See id.*, Ex. 2.

7 **RELIEF REQUESTED**

8 By this motion, Jeff seeks entry of an order granting him relief from the automatic stay  
9 pursuant to section 362(d) of the bankruptcy code to allow him to proceed under applicable  
10 nonbankruptcy law to allow the nonbankruptcy forum to provide Co-Trustees with instructions  
11 confirming co-trustees' distributions of life insurance policies to beneficiaries of the Menlo  
12 Trusts as reflected in the Distribution Agreement between Co-Trustees. Jeff also requests that  
13 the order be binding and effective in any bankruptcy case commenced by or against the Debtor  
14 for a period of 180 days, so that no further automatic stay shall arise in that case in the  
15 Nonbankruptcy Action.

16 **JURISDICTION**

17 The Court has jurisdiction over the motion pursuant to 28 U.S.C. §§ 157 and 1334.  
18 Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The matter is a core proceeding  
19 pursuant to 28 U.S.C. § 157(b)(2)(a), and this Court has subject matter jurisdiction to enter  
20 findings of fact and conclusions of law and a final judgment. The statutory predicate for the  
21 relief sought herein is section 362(d) of the Bankruptcy Code.

22 **ARGUMENT**

23 Under the Bankruptcy Code, “[o]n request of a party in interest and after notice and a  
24 hearing, the court shall grant relief from the stay . . . such as by terminating, annulling,  
25 modifying, or conditioning such stay . . . with respect to a stay of an act against property[.]” 11  
26 U.S.C. § 362(d)(2). Courts *must* grant relief from stay under § 362(d)(2) if two conditions apply:  
27 (1) the debtor does not have an equity in the property in question; and (2) such property is not  
28 necessary to an effective reorganization of the bankruptcy estate. *See, e.g., In re Tri-Growth*

1 *Centre City, Ltd.*, 136 B.R. 848, 849-850 (Bankr. S.D. Cal. 1992) (granting motion for relief  
2 from stay where debtor had insufficient interest in motel property and failed to carry its burden to  
3 demonstrate that the motel could be effectively used to reorganize).

4 Moreover, “[t]he bankruptcy court generally has broad discretion in granting relief from  
5 stay for cause under § 362(d).” *In re Edwards*, 454 B.R. 100, 107 (B.A.P. 9th Cir. 2011); *see*  
6 *also* 11 U.S.C. § 362(d)(1). “Exercising discretion in determining cause for stay relief requires  
7 the balancing of hardships and consideration of totality of the circumstances.” *See In re Avila*,  
8 311 B.R. 81, 83-84 (Bankr. N.D. Cal. 2004) (citing *In re Kennedy*, 165 B.R. 488, 490 (Bankr.  
9 W.D. Wash. 1994)); *In re Conejo Enters., Inc.*, 96 F.3d 346, 352 (9th Cir. 1996) (“‘Cause’ has  
10 no clear definition and is determined on a case-by-case basis.”).

11 Relief from stay must be granted under Section 362(d)(2) because: (1) Klein does not  
12 have an equity or, indeed, any interest whatsoever in the life insurance proceeds Co-Trustees  
13 seek to distribute; and (2) the life insurance funds are not necessary to an effective reorganization  
14 of the estate because they are not part of the bankruptcy estate. Alternatively, relief from stay  
15 should be granted for cause under Section 362(d)(1) because the Superior Court is the  
16 appropriate venue to confirm distributions to the beneficiaries, the continued litigation in the  
17 Superior Court will not interfere with the bankruptcy case or prejudice the interests of any  
18 interested parties, the Menlo Beneficiaries’ interests will be resolved most expeditiously in the  
19 Superior Court, and the Menlo Beneficiaries will be more hurt by the stay than Klein or any  
20 other interested party will be by temporary relief.

21 **I. RELIEF FROM STAY MUST BE GRANTED UNDER SECTION 362(D)(2)**

22 The Court must grant relief from stay under § 362(d)(2). First, Klein has no interest or  
23 equity in the property (specifically, the life insurance policies within the Menlo Trusts) that Co-  
24 Trustees seek to distribute to the Menlo Beneficiaries. Second, the life insurance proceeds are  
25 not necessary to a reorganization of the bankruptcy estate.

1           A.     **Klein Has No Right To Or Interest In The Life Insurance Proceeds Co-**  
2                   **Trustees Seek To Distribute**

3           The Court is required to grant stay relief to the movant if, “with respect to a stay of an act  
4 against property under” section 362(a), the debtor lacks an equity in the property. *See Tri-*  
5 *Growth*, 136 B.R. at 850 (holding that “equity” for purposes of determining whether creditor is  
6 entitled to relief from stay is “the difference between the value of the debtor’s interest in the  
7 property and the total of all encumbrances against it”).

8           The Menlo Beneficiaries are the rightful beneficiaries of the Menlo Trust assets including  
9 the proceeds of the life insurance policies within the Menlo Trusts. Jeff and Frank, as Co-  
10 Trustees of the Menlo Trusts, agreed to distribute the proceeds of three of these policies – two  
11 separate American General policies and a Lincoln National policy – among the original life  
12 insurance beneficiaries under the policies and additional Menlo Trust beneficiaries. The exact  
13 terms of Co-Trustees’ agreement are detailed in the Distribution Agreement attached to Jeff’s  
14 Petition for Instructions filed in the Superior Court on July 28, 2023. *See Weingarten Decl.*, Ex.  
15 1 at Ex. 1.

16           There is no evidence whatsoever that Klein has any equity in the life insurance proceeds  
17 because he has zero legitimate interest in or right to that property. *See id.*, Ex. 7 at 19:14-24,  
18 22:11-25:9; Ex. 9; Ex. 11, ¶¶ 6-7; Ex. 12, ¶ 6. Klein for the first time on June 5, 2023 (after over  
19 a decade of litigation regarding the Menlo Trusts) argued without substantiating evidence that  
20 “potentially all sorts of ancillary claims” to the insurance proceeds existed from third parties or  
21 from Klein himself. *See id.*, Ex. 7 at 10:12-28. Klein was unable to provide any evidence  
22 supporting his arguments at hearing. Then, after the Court gave him more time to provide the  
23 “underlying documents,” Klein filed a June 28, 2023 declaration *without supporting*  
24 *documentation*. *See id.*, Ex. 9. Instead, he claimed (falsely and without evidence) that only  
25 amounts he “borrowed” from certain beneficiaries to pay insurance premiums should be  
26 distributed back to them. *See id.*, Ex. 9, ¶ 6. Klein has been given ample opportunity to provide  
27 documents supporting any interest he has in the life insurance policies, and he has produced  
28



nothing. The bankruptcy trustee’s request for “appropriate disclosures” is futile (as Klein has nothing more to disclose) and should not preclude the relief Jeff is seeking from being granted.

Significantly, Klein does not even claim that the insurance funds belong to him or any non-beneficiary third party (as Saltzman points out in his July 7, 2023 declaration). *See id.*, Ex. 9; Ex. 11, ¶¶ 6-7. Olson flatly admits in his July 9, 2023 declaration that Klein “did not make a claim personally to the insurance proceeds.” *See id.*, Ex. 12, ¶ 6. And, Klein fails to name any non-beneficiary third party who might have an interest or provide any evidence supporting such a third party claim. *See id.*, Exs. 9, 11, 12. Moreover, any amounts of the life insurance proceeds Klein “borrowed” or to which he might claim any right were procured via fraud and embezzlement as has already been determined by Judge Reiser in the eighty-four page R&R and adopted by Judge Luna in the Superior Court. *See* Dkt. No. 84, Young Decl., Ex. 1; Weingarten Decl., Ex. 11. There is no legitimate reason to further delay distribution of the proceeds to the Menlo Beneficiaries.

**B. The Life Insurance Proceeds Are Unnecessary For Effective Reorganization Of The Bankruptcy Estate**

The Court must grant relief from stay under § 362(d)(2) because the life insurance policies within the Menlo Trusts that Co-Trustees seek to distribute to the Menlo Beneficiaries are not part of the bankruptcy estate and are, therefore, not necessary to an effective reorganization of the estate. Klein does not even attempt to lay claim to most of the \$30 million Co-Trustees aim to distribute to beneficiaries with the Petition for Instructions and Distribution Agreement.

The Court is required to grant stay relief to the movant if, “with respect to a stay of an act against property under” section 362(a), the property is not “necessary to an effective reorganization.” *See Tri-Growth*, 136 B.R. at 850 (citing Section 362(d)(2)). The party opposing the motion bears the burden to show that the property is necessary to a reorganization that is “in prospect.” *See In re A Partners, LLC*, 344 B.R. 114, 126 (Bankr. E.D. Cal. 2006) (citing *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 375-

76 (1988)) (holding that “in prospect” means there must be “a reasonable possibility of a successful organization within a reasonable time”).

Klein cannot and does not claim the life insurance policies as part of the bankruptcy estate (much less establish that they are essential to a reorganization of the estate). *See* Weingarten Decl., Exs. 9, 12. At most, Klein claims that approximately \$6 million related to life insurance policies belong to certain beneficiaries (from whom he “borrowed” to pay insurance premiums or attorneys’ fees), but Klein does not claim that these funds belong to him or to another non-beneficiary third party (and, thus, does not claim these funds as part of the bankruptcy estate). *See id.*, Exs. 9, 11, 12. The funds belong to the Menlo Trust beneficiaries. *See id.*, Exs. 1-2. Moreover, Klein has produced zero evidence to support his claims that these funds might belong to unnamed non-beneficiary third parties even after the bankruptcy trustee requested that he do so both at a June 5, 2023 hearing in the Superior Court and in Sharp’s July 6, 2023 response to Klein’s declaration (notably, neither Klein’s nor Olson’s declarations included supporting documentation). *See generally id.*, Exs. 7, 9-12. Needless to say, property that is not claimed to be part of the bankruptcy estate is not necessary to an effective reorganization of the estate.

**II. ALTERNATIVELY, THE COURT MAY GRANT RELIEF FROM STAY UNDER SECTION 362(D)(1) BECAUSE SUFFICIENT “CAUSE” EXISTS FOR RELIEF**

The Court should grant relief from stay “for cause” under § 362(d)(1) as the balance of harms if the case remains stayed weighs in favor of the Menlo Beneficiaries and against Klein.

The Court has broad discretion in granting relief from stay for cause under § 362(d). *See In re Edwards*, 454 B.R. at 107. The party seeking relief from stay must first establish a prima facie case that “cause” exists. *See In re Am. Spectrum Realty, Inc.*, 540 B.R. 730, 737 (Bankr. C.D. Cal. 2015) (holding cause for relief from stay existed because the balance of factors weighed in favor of granting relief from stay). The burden shifts to the debtor to show that relief from the stay is unwarranted once the movant’s prima facie case has been established. *See id.* (“The discretion whether to grant or deny stay relief is within the broad discretion of the bankruptcy court.”).

Courts will consider a number of non-exclusive factors to determine whether due “cause” warrants relief from stay including, but not limited to: (1) whether there is lack of any connection or interference with the bankruptcy case; (2) whether the litigation in another forum would prejudice the interests of other creditors and other interested parties; (3) the interests of judicial economy and the expeditious and economical determination of litigation for the parties; and (4) the impact of the stay on the parties and the “balance of hurt.” *See In re Am. Spectrum Realty*, 540 B.R. at 737.

Myriad non-exclusive factors weigh in favor of relief from stay including:

- The Superior Court is the appropriate venue to confirm distributions to the beneficiaries. Judge Luna in the Superior Court is well-versed in probate-specific issues and familiar with the facts of a decade-long drawn-out and complicated litigation. *See, e.g.,* Weingarten Decl., Exs. 4-5.
- The continued litigation in the Superior Court for the purposes of distributing life insurance proceeds to the Menlo Beneficiaries pursuant to the terms of the Distribution Agreement and Petition for Instructions will not interfere with the bankruptcy case. The life insurance proceeds are not part of the bankruptcy estate and will not impact or interfere with any reorganization of the bankruptcy estate. *See id.*, Ex. 11, ¶¶ 10-13.
- Lifting the stay for the purposes of making life insurance distributions will not prejudice the interests of Klein or any interested parties. The Menlo Beneficiaries are the only parties entitled to these distributions as both Co-Trustees of the Menlo Trusts. Klein has no interest in these distributions nor does he claim such an interest in his June 28, 2023 declaration or Olson’s July 9, 2023 declaration (on behalf of himself or any non-beneficiary third party). *See id.*, Exs. 9, 12.
- Finally, the Menlo Beneficiaries’ interests will be resolved most expeditiously in the Superior Court. Klein has drawn this litigation out for over a decade during which time the Menlo Beneficiaries have received zero distributions. Now he is attempting to stall the litigation still further by filing for bankruptcy in bad faith. *See* Dkt. No. 84. The Menlo Beneficiaries will suffer greater prejudice from the stay and continued lack of distributions than Klein or any other

1 interested party will suffer by temporary relief from the stay because neither Klein nor any other  
2 third party has any legitimate interest in these distributions. *See* Weingarten Decl., Exs. 9, 11-  
3 12.

4 There is no legitimate reason to further delay the beneficiaries' distributions of the life  
5 insurance proceeds.

6 **CONCLUSION**

7 Based on the foregoing, the Motion should be granted.

8 Dated: August 11, 2023

**WILLKIE FARR & GALLAGHER LLP**

9  
10 By: /s/ Alex M. Weingarten  
11 Alex M. Weingarten  
12 Logan M. Elliott  
13 Attorneys for Petitioner  
14 CO-TRUSTEE JEFFREY WINTER  
15  
16  
17  
18  
19  
20  
21  
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24  
25  
26  
27  
28

WILLKIE FARR & GALLAGHER LLP  
2029 CENTURY PARK EAST, SUITE 3400  
LOS ANGELES, CA 90067  
310-855-3000

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
Willkie Farr & Gallagher LLP, 2029 Century Park East, Suite 3400, Los Angeles, California 90067

A true and correct copy of the foregoing document entitled (*specify*):  
MOTION FOR ORDER GRANTING RELIEF FROM AUTOMATIC STAY PURSUANT TO 11 U.S.C § 362

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 08/11/2023, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) 08/11/2023, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Honorable Sandra R. Klein  
United States Bankruptcy Court Central District of California  
Edward R. Roybal Federal Building and Courthouse  
255 E. Temple Street, Suite 1582 / Courtroom 1575, Los Angeles, CA 90012

☒ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

08/11/2023 Arkisa Ward  
*Date Printed Name*

/s/ Arkisa Ward  
*Signature*

**SERVICE LIST**

**TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**

Reem J Bello on behalf of Interested Party Reem J Bello  
rbello@goeforlaw.com, kmurphy@goeforlaw.com

Greg P Campbell on behalf of Interested Party Courtesy NEF  
ch11ecf@aldridgepite.com, gc@ecf.inforuptcy.com;gcampbell@aldridgepite.com

Theron S Covey on behalf of Creditor Wilmington Savings Fund Society, FSB, d/b/a Christiana  
Trust, not individually but as trustee for Pretium Mortgage Acquisition Trust  
tcovey@raslg.com, sferry@raslg.com

Jeffrey W. Dulberg on behalf of Trustee Bradley D. Sharp  
jdulberg@pszjlaw.com

Dane W Exnowski on behalf of Interested Party Courtesy NEF  
dane.exnowski@mccalla.com, bk.ca@mccalla.com, mccallaecf@ecf.courtdrive.com

Robert P Goe on behalf of Creditor Erica Vago  
kmurphy@goeforlaw.com, rgoe@goeforlaw.com;goeforecf@gmail.com

Robert P Goe on behalf of Creditor Joseph Vago  
kmurphy@goeforlaw.com, rgoe@goeforlaw.com;goeforecf@gmail.com

Robert P Goe on behalf of Interested Party Robert P Goe  
kmurphy@goeforlaw.com, rgoe@goeforlaw.com;goeforecf@gmail.com

Brandon J Iskander on behalf of Creditor Erica Vago  
biskander@goeforlaw.com, kmurphy@goeforlaw.com

Brandon J Iskander on behalf of Creditor Joseph Vago  
biskander@goeforlaw.com, kmurphy@goeforlaw.com

Michael S. Kogan on behalf of Debtor Leslie Klein  
mkogan@koganlawfirm.com

John W. Lucas on behalf of Trustee Bradley D. Sharp  
jlucas@pszjlaw.com

Ron Maroko on behalf of U.S. Trustee United States Trustee (LA)  
ron.maroko@usdoj.gov

Kenneth Miskin on behalf of U.S. Trustee United States Trustee (LA)  
kenneth.m.miskin@usdoj.gov

Jeffrey P. Nolan on behalf of Trustee Bradley D. Sharp  
jnolan@pszjlaw.com

Jeffrey N. Pomerantz on behalf of Trustee Bradley D. Sharp  
jpomerantz@pszjlaw.com

Joshua L Scheer on behalf of Creditor Ajax Mortgage Loan Trust 2021-D, Mortgage-Backed Securities, Series 2021-D, by U.S. Bank National Association, as Indenture Trustee  
jscheer@scheerlawgroup.com, jscheer@ecf.courtdrive.com

Mark M Sharf (TR)  
mark@sharflaw.com,  
C188@ecfcbis.com;sharf1000@gmail.com;2180473420@filings.docketbird.com

Alan G Tippie on behalf of Interested Party Courtesy  
Alan.Tippie@gmlaw.com,  
atippie@ecf.courtdrive.com;Karen.Files@gmlaw.com,patricia.dillamar@gmlaw.com,denise.walker@gmlaw.com

United States Trustee (LA)  
ustpreion16.la.ecf@usdoj.gov

Michael L Wachtell on behalf of Interested Party Courtesy  
mwachtell@buchalter.com

John P. Ward on behalf of Creditor U.S. Bank, N.A., as Trustee  
for Velocity Commercial Capital Loan Trust 2018-2  
jward@attleseystorm.com, ezhang@attleseystorm.com

Clarisse Young on behalf of Interested Party Courtesy  
youngshumaker@smcounsel.com, levern@smcounsel.com

Paul P. Young on behalf of Creditor Franklin Menlo  
paul@cym.law, jaclyn@cym.law

Paul P. Young on behalf of Interested Party Courtesy  
paul@cym.law, jaclyn@cym.law

WILLKIE FARR & GALLAGHER LLP  
2029 CENTURY PARK EAST, SUITE 3400  
LOS ANGELES, CA 90067  
310-855-3000

**SERVED BY UNITED STATES MAIL:**

Mark M Sharf  
6080 Center Drive, Ste 600  
Los Angeles, CA 90045-1540

Erica Vago and Joseph Vago  
c/o Brian A Procel / Procel Law, PC  
401 Wilshire Blvd, 12th Fl  
Santa Monica, CA 90401-1456

Bradley D. Sharp  
333 So. Grand Ave., Suite 4070  
Los Angeles, CA 90071

Erica and Joseph Vago  
124 N Highland Ave  
Sherman Oaks, CA 91423

Andor Gestetner  
c/o Law Offices of Jacob Unger  
5404 Whitsett Ave, Ste 182  
Valley Village, CA 91607- 1615

Fay Servicing LLC  
PO Box 814609  
Dallas, TX 75381-4609

Bank of America  
Attn: Bankruptcy  
4909 Savarese Circle  
Tampa, FL 33634-2413

Fiore Racobs and Powers  
Attn Erin A Maloney  
6820 Indiana Avenue, Suite 140  
Riverside, CA 92506-4261

Bank of America, N.A.  
PO Box 673033  
Dallas, TX 75267-3033

First Amended Wendriger  
Family Trust  
c/o Shumaker Mallory LLP  
Clarisse Young Shumaker  
280 S Beverly Dr, Suite 505  
Beverly Hills, CA 90212-3908

Barclays Bank Delaware  
Attn: Bankruptcy  
PO Box 8801  
Wilmington, DE 19899-8801

Franklin H. Menlo Irrevocable Trust  
c/o Wilkie Farr & Gallagher LLP  
Attn: Alex M Weingarten, Esq.  
2029 Century Park East, Ste 3400  
Los Angeles, CA 90067-3020

CCO Mortgage Corp  
10561 Telegraph Rd  
Glen Allen, VA 23059-4577

California Bank & Trust  
PO Box 711510  
Santee, CA 92072-1510

Gestetner Charitable Remainder Trust  
c/o Andor Gestatner  
1425 55th Street  
Brooklyn, NY 11219

JPMorgan Chase Bank, N.A.  
Bankruptcy Mail Intake Team  
700 Kansas Lane Floor 01  
Monroe, LA 71203-4774

Internal Revenue Service  
PO Box 7346  
Philadelphia, PA 19101-7346

Chase Doe  
143 S Highland Drive  
Los Angeles, CA 90036-3028

JPMorgan Chase Bank, N.A.  
s/b/m/t Chase Bank USA, N.A.  
c/o National Bankruptcy Services LLC  
PO Box 9013  
Addison, TX 75001-9013

Chase Mortgage  
BK Department / Mail Code LA4 5555  
700 Kansas Lane  
Monroe, LA 71203

Jacob Rummitz  
315 N Martel Avenue  
Los Angeles, Ca 90036-2515

Citibank  
Attn: Bankruptcy  
PO Box 790034  
St Louis, MO 63179-0034

WILLKIE FARR & GALLAGHER LLP  
2029 CENTURY PARK EAST, SUITE 3400  
LOS ANGELES, CA 90067  
310-855-3000



**WILLKIE FARR & GALLAGHER LLP**  
2029 CENTURY PARK EAST, SUITE 3400  
LOS ANGELES, CA 90067  
310-855-3000

1	Jeffrey Siegel, Successor Trustee Of the Hubert Scott Trust c/o Oldman, Cooley, Sallus	Wilmington Savings Fund Society, FSB d/b/a Robertson, Anschutz,
2	16133 Ventura Blvd, Penthouse Ste	Schneid, Crane & Partners 350 10th Avenue, Suite 1000
3	Encino, CA 91436-2447	San Diego, CA 92101-8705
4	Los Angeles County Treasurer/Tax Attn: Bankruptcy Unit	US Bank Trust, N.A., et al. Fay Servicing LLC
5	PO Box 54110 Los Angeles, CA 90054-0110	PO Box 814609 Dallas, TX 75381-4609
6	Leslie Klein & Associates, Inc. c/o Parker Milliken	MRC/United Wholesale M Attn: Bankruptcy
7	555 Flower Street Los Angeles, CA 90071-2300	PO BOX 619098 Dallas TX 75261
9	MRS/United Wholesale M Attn Bankruptcy	Fiore Racobs & Powers c/o Palm Springs Country Club HOA
10	PO Box 619098 Dallas, TX 75261-9098	6820 Indiana Ave, Ste 140 Riverside CA 92506
11	Oldman, Cooley, and Sallus 16133 Ventura Blvd, Penthouse Ste	Reem J Bello Goe Forsythe & Hodges LLP 17701 Cowan, Bldg. D Suite 210
12	Encino, CA 91436-2447	Irvine, CA 92614
14	Sandra Layton 161 N Poinsettia Place Los Angeles, CA 90036-2805	Robert P Goe Goe Forsythe & Hodges LLP 17701 Cowan Street, Suite 210 Bldg D Irvine CA 92614
15	Selene Finance Attn Bankruptcy PO Box 8619 Philadelphia, PA 19101-8619	Greg P Campbell Aldridge Pite, LLP 8880 Rio San Diego Drive; Ste 725 San Diego, CA 92108
16	Shellpoint Mortgage Servicing Attn Bankruptcy PO Box 10826 Greenville, SC 29603-0826	Theron S Covey 350 10th Ave. Suite 1000 San Diego, CA 92101
17	Toyota Financial Services Attn: Bankruptcy PO Box 259001 Plano, TX 75025-9001	Dane W Exnowski McCalla Raymer Leibert Pierce, LLP 301 E. Ocean Blvd., Suite 1720 Long Beach, CA 90802
18	Toyota Lease Trust c/o Toyota Motor Credit Corporation PO Box 9013 Addison, TX 75001-9013	Brandon J Iskander Goe Forsythe & Hodges LLP 17701 Cowan; Building D Suite 210 Irvine, CA 92614
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

**WILLKIE FARR & GALLAGHER LLP**  
2029 CENTURY PARK EAST, SUITE 3400  
LOS ANGELES, CA 90067  
310-855-3000

1	United States Trustee (LA) 915 Wilshire Blvd, Ste. 1850 Los Angeles, CA 90017-3560	Leslie Klein, Debtor 322 N. June Street Los Angeles, CA 90001
3	Ron Maroko 915 Wilshire Blvd., Ste 1850 Los Angeles, CA 90017	Kenneth Miskin 411 W. Fourth Street, #7160 Santa Ana, CA 92701
5	Joshua L Scheer 85 Argonaut, Suite 202 Aliso Viejo, CA 92656	Jeffrey W. Dulberg Pachulski Stang Ziehl & Jones LLP 10100 Santa Monica Blvd, 13th Floor Los Angeles, CA 90067
7	Alan G Tippie Greenspoon Marder LLP 333 South Grand Avenue Suite 3400 Los Angeles, CA 90071	John W. Lucas Pachulski Stang Ziehl & Jones LLP One Sansome Street, 34th Floor, Ste. 3430 San Francisco, CA 94104
10	Michael L Wachtell Buchalter, A Professional Corporation 1000 Wilshire Blvd. Suite 1500 Los Angeles, CA 90210	Jeffrey P. Nolan Pachulski Stang Ziehl & Jones LLP 10100 Santa Monica Blvd, 13th Floor Los Angeles, CA 90067
13	John P. Ward Attlesey Storm, LLP 111 Pacifica, Suite 140 Irvine, CA 94618	Jeffrey N. Pomerantz Pachulski Stang Ziehl & Jones LLP 10100 Santa Monica Blvd, 13th Floor Los Angeles, CA 90067
16	Clarisse Young Shumaker Mallory, LLP 333 S. Hope Street 35th Floor Los Angeles, CA 90071	Honorable Sandra R. Klein United States Bankruptcy Court Central District of California Edward R. Roybal Federal Building and Courthouse 255 E. Temple Street, Suite 1582 / Courtroom 1575 Los Angeles, CA 90012
19	U.S. Bank c/o Fay Servicing, LLC PO Box 814609 Dallas, TX 75381	
22	Chase Card Services Attn: Bankruptcy PO Box 15298 Wilmington, DE 19850	
24	Leslie Klein & Associates, Inc. 515 South Figueroa Street 8th Floor Los Angeles, California 90071	
27	Fay Servicing LLC Attn: Bankruptcy Dept PO BOX 809441 Chicago, IL 60680	